

SITE VISIT AND PREHEARING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)
)
Application for Certification) Docket No.
of the San Joaquin Valley Energy) 01-AFC-22
Center Project in Fresno County)
(SJVEC))
_____)

GURU ASSEMBLY HALL
8696 MAIN STREET
SAN JOAQUIN, CALIFORNIA

WEDNESDAY, JANUARY 29, 2003

2:00 p.m.

Reported by:
James A. Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

John L. Geesman, Associate Member

HEARING OFFICER, ADVISORS PRESENT

Major Williams, Jr., Hearing Officer

STAFF AND CONSULTANTS PRESENT

Paul Kramer, Legal Counsel

Mathew Trask, Siting Project Manager

Lance Shaw, Compliance Project Manager

PUBLIC ADVISER

Roberta Mendonca

APPLICANT

Jeffrey D. Harris, Attorney

Greggory L. Wheatland, Attorney

Ellison, Schneider and Harris, LLP

Michael L. Argentine, Manager, Project Development

Peter Hansen, Vice President of Development

Jim McLucas, Project and Resident Engineer

Calpine Corporation

John L. Carrier

CH2MHILL

Steve DeYoung, Environmental Consultant

Tom Lagerquist, Environmental Consultant

INTERVENORS

Keith Freitas

ALSO PRESENT

Feleena Sutton
for Assemblymember Sarah Reyes

Amarpreet Dhaliwal, Mayor Pro Tem
City of San Joaquin

Cruz W. Ramos, City Manager
City of San Joaquin

Juan Arambula, Chairman
Board of Supervisors
County of Fresno

Richard L. Brogran, P.E., Director
Department of Public Works and Planning
County of Fresno

Ron Manfredi, City Manager
City of Kerman

Mike Mendes, Senior Engineering Associate
King River Conservation District

David C. Yancey, Field Representative
Plumbers, Pipe and Refrigeration Fitters Joint
Apprenticeship and Training Committee

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P R O C E E D I N G S

2:00 p.m.

ASSOCIATE MEMBER GEESMAN: I want to thank everyone for coming to this prehearing conference of the California Energy Commission for the San Joaquin Valley Energy Center.

I'm John Geesman, one of the two Commissioners assigned to the case. My colleague, Commissioner Art Rosenfeld, is previously committed; and I am likely to be the only Commission in attendance both today and at our planned evidentiary hearings in several weeks.

Sitting to my right is Major Williams, the Hearing Officer in the case. I'm going to ask him to conduct the hearing. I'll have some questions later on, and I'd encourage people to speak clearly into the microphones so that everyone in the room can hear what you're saying and so that we can properly get your identification, as well.

Major.

HEARING OFFICER WILLIAMS: Thank you, Commissioner Geesman. Good afternoon. As Commissioner Geesman indicated, my name is Major Williams. I'm the Hearing Officer in this matter.

1 I'd note that our Public Adviser is here, Roberta
2 Mendonca, if there are any public members who are
3 here and have any questions. She's in the back,
4 the lady with the lighter hair. And you should
5 grab her if you have any questions about our
6 process here today. Feel free to do so.

7 I guess we'll continue with the
8 introductions at this point. We'll begin with the
9 applicant. And then we'll go to staff; and then
10 we'll take those members who have other
11 associations.

12 MR. ARGENTINE: My name is Mike
13 Argentine; I'm Project Manager for the applicant.
14 I'd also like to introduce some of the members of
15 our project team that are in the audience.

16 We have Gregg Wheatland, who is one of
17 our attorneys. Peter Hansen, who's Calpine's Vice
18 President of Development. Steve DeYoung, an
19 environmental consultant. John Carrier, CH2MHILL,
20 who's responsible for preparing the AFC. Tom
21 Lagerquist, who's an environmental consultant.
22 And then Jim McLucas, who is our Project and
23 Resident Engineer.

24 MR. HARRIS: And I'm Jeff Harris; and
25 I'm legal counsel for Calpine on the project.

1 HEARING OFFICER WILLIAMS: Thank you.
2 Staff.

3 MR. TRASK: I'm Matt Trask, the Project
4 Manager for the Siting Division. With me is Paul
5 Kramer, the attorney for the Siting Division. We
6 had a couple other staff members, but I believe
7 they're out -- oh, Lance Shaw is the Compliance
8 Project Manager.

9 HEARING OFFICER WILLIAMS: Yes, I think
10 we have the Mayor Pro Tem and other officials from
11 the City here. Could you --

12 MAYOR PRO TEM DHALIWAL: Yes, my name is
13 Amarpreet Dhaliwal, you can call me Ruby.

14 HEARING OFFICER WILLIAMS: Okay. Could
15 you come up to the mike, sir, and if you have a
16 business card please give it to our court reporter
17 so --

18 MAYOR PRO TEM DHALIWAL: I don't have a
19 business card, but I have our written statement
20 that I can leave, our concerns about the project.
21 And if I can get done right now maybe I can just
22 move on.

23 HEARING OFFICER WILLIAMS: Okay, if you
24 would just, again, spell your name for the court
25 reporter so he --

1 UNIDENTIFIED SPEAKER: Actually I'll
2 give him a blue card.

3 HEARING OFFICER WILLIAMS: Okay.

4 MAYOR PRO TEM DHALIWAL: My name is
5 Amarpreet Dhaliwal, A-m-a-r-p-r-e-e-t, Amarpreet
6 Dhaliwal, and I'm the Mayor Pro Tem for the City
7 of San Joaquin. Here I'm representing my City
8 Council.

9 Dear Mr. Geesman and the Commissioners.
10 Welcome to the City of San Joaquin. Our Mayor,
11 Ms. Rosemary Ramirez, could not be here. She had
12 to be with her family for her mother, so I
13 apologize for her absence.

14 The elected officials of the City of San
15 Joaquin and the staff fully supports the project
16 of Central Valley Energy Center and the proposed
17 site in the City.

18 We have seen it from differing angles
19 for over two years, and we think it will be a good
20 thing for the City. And we have seen it from any
21 angle that we could think would affect our town.
22 So we are fully supportive of it.

23 I appreciate the opportunity to speak
24 today on the behalf of the City Council. And I'd
25 like to request, the thing that I'd like to

1 request of you guys is to hold the evidentiary
2 hearing in the City of San Joaquin. That would
3 help us reduced our travel expenses and it would
4 be to our benefit.

5 We'd ask for our consideration in this
6 matter in order to allow this community and other
7 interested parties the opportunity to provide
8 their comments and concerns locally with a minimum
9 of travel expense, and hold the evidentiary
10 hearing in San Joaquin.

11 Your consideration of our request and
12 efforts on the project are greatly appreciated.
13 Yours truly.

14 ASSOCIATE MEMBER GEESMAN: Thank you,
15 Mr. Dhaliwal.

16 HEARING OFFICER WILLIAMS: Thank you,
17 sir. Are there any other City of San Joaquin
18 officials here? I thought there was one on the --
19 yes, ma'am.

20 ASSOCIATE MEMBER GEESMAN: City Manager
21 accompanied us on the site visit.

22 HEARING OFFICER WILLIAMS: Yes.

23 MS. RAMOS: I'm busy signing in.

24 (Laughter.)

25 MS. RAMOS: Mr. Chairman, Members of

1 your Staff, and other interested parties, my name
2 is Cruz Ramos; I'm the San Joaquin City Manager.
3 And as our Mayor Pro Tem has spoken on behalf of
4 the City, we would welcome your consideration for
5 our request. And also welcome you here.

6 Thank you very much for your time.

7 ASSOCIATE MEMBER GEESMAN: Thank you,
8 Ms. Ramos.

9 HEARING OFFICER WILLIAMS: Thank you
10 very much. Is there anyone from the County here,
11 County of Fresno?

12 MR. BROGAN: Thank you. Yes, good
13 afternoon; my name is Richard Brogan and I'm the
14 Fresno County Department of Public Works Plannings
15 Director. It's my pleasure to be here this
16 afternoon.

17 Our County has been consulted at various
18 points along the planning process, the preliminary
19 planning process of the project. And basically we
20 were consulted and asked just to issue comments
21 relative to a concept of utilizing our public road
22 rights-of-way in terms of the possible prospect of
23 bringing cooling water for the plant from the City
24 of Fresno wastewater treatment facility out to the
25 anticipated plant site.

1 So, we've had some very preliminary
2 discussions along those lines at this point. I
3 would like to reiterate that all of our
4 discussions have been just exactly that, very
5 preliminary, conceptual only in nature.

6 And at this point, you know, I can tell
7 you from the perspective of the County of Fresno,
8 that the County, on a conceptual basis, is open to
9 getting more information and understanding better,
10 relative to how our right-of-way might be
11 utilized.

12 So, we, of course, have County
13 processes, but so far our involvement, we feel,
14 has been too preliminary to get down into the
15 details of what kind of arrangements would have to
16 be made in order to facilitate a pipeline in our
17 right-of-way.

18 So my main purpose today here is to just
19 gather information, and kind of witness the
20 process. Thank you.

21 If there's any questions that I can
22 answer along the way I'd be most happy to try to
23 do that. Thank you.

24 ASSOCIATE MEMBER GEESMAN: Thank you.

25 HEARING OFFICER WILLIAMS: Thank you,

1 sir. If you do have a business card, if you could
2 leave it with the court reporter that would be a
3 big assist.

4 MR. BROGAN: I'd be very happy to, thank
5 you.

6 HEARING OFFICER WILLIAMS: So that we
7 can get your spellings correct. Also, do you have
8 any other members of the County Staff here that
9 you'd like to introduce?

10 MR. BROGAN: I believe I'm the County
11 representative today, but thank you.

12 HEARING OFFICER WILLIAMS: Okay, thank
13 you.

14 Do we have any public members who are
15 here who would like to come up and introduce --

16 MR. MENDES: My name is Mike Mendes; I'm
17 with King River Conservation District. Thank you.

18 HEARING OFFICER WILLIAMS: Okay. Any
19 others? Yes, sir, please come up.

20 MR. FREITAS: Good afternoon. My name
21 is Keith Freitas. I represent myself and my
22 mother's interest. We're adjacent property owners
23 to the proposed site. And I've made an
24 application to be an intervenor in this process.
25 So I came here today to see if my application is

1 going to be accepted or rejected number one. And
2 if it is --

3 MR. HARRIS: It's not our decision, but
4 we have no objections.

5 (Laughter.)

6 MR. FREITAS: Oh, okay, great. Well,
7 that's it.

8 ASSOCIATE MEMBER GEESMAN: Does the
9 staff have any objection?

10 MR. TRASK: No, the staff does not.

11 ASSOCIATE MEMBER GEESMAN: Why don't we
12 grant the petition to intervene.

13 MR. FREITAS: Okay.

14 HEARING OFFICER WILLIAMS: It's granted.

15 MR. FREITAS: Okay, thank you.

16 HEARING OFFICER WILLIAMS: There will be
17 a written notice, as well.

18 MR. FREITAS: Okay, fine.

19 HEARING OFFICER WILLIAMS: Sir, do you
20 have access to the internet?

21 MR. FREITAS: Yes.

22 HEARING OFFICER WILLIAMS: Okay. If you
23 could perhaps give your address to Roberta.

24 MR. FREITAS: Okay.

25 HEARING OFFICER WILLIAMS: Because

1 you'll be on our notice, and from time to time we
2 send out notices by email. It's a little faster
3 to keep folks abreast. So, --

4 MR. FREITAS: Roberta and I were
5 communicating last two days together, so --

6 HEARING OFFICER WILLIAMS: Okay, good.

7 ASSOCIATE MEMBER GEESMAN: Great.

8 MR. FREITAS: Thank you.

9 HEARING OFFICER WILLIAMS: Thank you.

10 MR. KRAMER: Mr. Williams.

11 HEARING OFFICER WILLIAMS: Yes.

12 MR. KRAMER: Just one point. He's
13 coming into the process very late, and I think it
14 might be well to -- our concern would be that his
15 late intervention would not change anything as far
16 as the process goes in timing.

17 And it may be useful for him to be told
18 at some point that, you know, the normal rights he
19 would have as an intervenor for discovery and all
20 that obviously are past. And just so that he
21 doesn't have any unreasonable expectations to what
22 he's going to be able to do at this late date in
23 this process.

24 HEARING OFFICER WILLIAMS: Well, that's
25 probably a good segue into our next area of

1 discussion which is our schedule.

2 Now, the City of San Joaquin has made a
3 request that we consider holding evidentiary
4 hearings here in the San Joaquin area. Do you
5 have any thoughts on that request?

6 MR. KRAMER: It will complicate things a
7 little bit depending on the number of witnesses we
8 have. But I don't think we object to the concept.

9 For instance, we would not want to start
10 on the morning of the 18th, because we all have to
11 get here. It's a three-day weekend. But, aside
12 from that, we're open to either Sacramento or
13 here.

14 MR. TRASK: Staff has no preference.

15 ASSOCIATE MEMBER GEESMAN: Why don't we
16 ask the applicant their reaction.

17 MR. HARRIS: We have no objection,
18 either, to be here. And we also have no objection
19 to the concept of splitting between here and
20 Sacramento if that's more efficient for -- I know
21 there are a lot of staff members who are not going
22 to have to come down, but at least they'll be in
23 the building.

24 So, Mike, do you want to say a few
25 words?

1 MR. ARGENTINE: Yeah, what I wanted to
2 say was perhaps we could have the first day of
3 hearings in Sacramento for the uncontested issues;
4 and then the second day of hearings on the
5 contested issues here.

6 ASSOCIATE MEMBER GEESMAN: Well, let's
7 wait until the end of the day to determine that.
8 I want to emphasize I don't see any reason for
9 this to be an all-or-none decision. I think the
10 notion of splitting time between Sacramento and
11 here may be workable.

12 We've blocked out several days for
13 hearings. And I think at the end of this
14 prehearing conference we'll have a better sense as
15 to just how much time is likely on which
16 particular issues. And the City may have a view
17 as to which issue it would like to have heard down
18 here.

19 I think from our standpoint we want to
20 facilitate public participation and meaningful
21 public participation. So, I'm not certain that
22 that requires several days spent down here. But I
23 do want to make certain that the public does have
24 the opportunity to be involved.

25 As it relates to Mr. Freitas, I have no

1 intention of varying the schedule based on the
2 timing of his intervention, but I don't think that
3 the effectiveness of his participation should be
4 impacted. And we do have the Public Adviser here
5 to assist him in most effectively being involved
6 in our process.

7 MR. FREITAS: Can I comment?

8 ASSOCIATE MEMBER GEESMAN: Yes, Mr.
9 Freitas.

10 MR. FREITAS: Could the gentleman please
11 identify himself when he brought up the conditions
12 that he was trying to place upon me?

13 ASSOCIATE MEMBER GEESMAN: Yes, that was
14 our Staff Counsel Mr. Kramer.

15 MR. KRAMER: Right. No, I wasn't --

16 MR. FREITAS: Mr. -- I'm sorry.

17 MR. KRAMER: I don't think it's fair to
18 say I was trying to impose conditions. I was
19 simply pointing out that the time for discovery is
20 past and our concern that the process not be
21 delayed because of his intervention.

22 There's an argument, I suppose, that our
23 rules require that petitions be filed 30 days
24 before the hearings. Now, if we're talking about
25 a hearing February 18th, technically it's too

1 late. The Committee can find good cause and allow
2 it, nonetheless.

3 ASSOCIATE MEMBER GEESMAN: Well, the
4 Committee did offer both the applicant and the
5 staff the opportunity to object to the
6 intervention. There was no objection.

7 MR. KRAMER: Right. No, I don't mean my
8 comments to be an objection, just I want to be
9 clear that we're not going to slow things down.

10 MR. FREITAS: I just didn't get your
11 name. I'm sorry.

12 MR. KRAMER: It's Paul Kramer with a K.

13 MR. FREITAS: Paul Kramer --

14 MR. KRAMER: Right.

15 MR. FREITAS: -- with a K? Thank you.

16 HEARING OFFICER WILLIAMS: Mr. Freitas,
17 I think the concern here is that the Committee had
18 blocked off, or has blocked off the 18th through
19 the 21st for evidentiary hearings. And your
20 coming into the proceeding rather late will mean
21 that you have not and will not have an opportunity
22 for any additional discovery.

23 So although you will be given the
24 materials that have been filed in the case, and
25 you will have all the rights of a party, and you

1 will be receiving all the materials that are filed
2 in the case by the applicant and the staff, and
3 likewise your materials will have to be served on
4 the applicant and staff and any other parties,
5 you're in a position now where you have to rely on
6 the material that's already in the record.

7 You can't independently ask us to allow
8 you to bring in additional materials for discovery
9 at this point. I mean you can ask, but it's very
10 unlikely that it's going to be granted.

11 So, with that, it might be helpful for
12 us to know which issues concern you so that we
13 will have some understanding of what the level of
14 your participation will be.

15 MR. FREITAS: Yeah, that's real simple
16 to address. And to help, you know, Mr. Kramer
17 understand something, I don't necessarily want to
18 slow down the process. I'm not here to slow down
19 the process.

20 I believe that there is probably a lot
21 of information that's contained in the report that
22 I've not had a chance to read over yet. I just
23 got it today. Likewise, I just received my
24 transcript today from the original first public
25 hearing, so I haven't had a chance to review what

1 my concerns were then and match them to what
2 staff's already compiled and found now, which
3 probably would eliminate a lot of my concerns
4 right off the bat.

5 It still remains, however, though, my
6 concern is one real deep concern I have is I guess
7 I'm going to have to go on record and object to
8 any stipulation between -- that's been formulated
9 between staff and the applicant which would, in
10 essence, fix or bar the opportunity for pertinent
11 and substantially impacting discovery to be
12 presented. If there was a misunderstanding
13 between in the evaluation process, or a
14 quantified, something that was quantified that
15 wasn't properly quantified when they evaluated the
16 process.

17 Are you stating now today that no one
18 has an opportunity to bring up any information at
19 all that may impact, may have a substantial impact
20 on any of the information that's already been
21 quantified? Just so I understand the process.

22 HEARING OFFICER WILLIAMS: Well, no, of
23 course not. We're not going to issue any blanket
24 restriction at this point because we don't know
25 what may be contained in any question you have.

1 And it may be something that the parties can
2 clearly respond to, or otherwise clarify for you.

3 So, that's not our intent. What we do
4 want you to be clear about is that we're not going
5 to re-enter a full-blown discovery, because we are
6 past that stage.

7 ASSOCIATE MEMBER GEESMAN: I suspect
8 that Mr. Freitas is not an attorney. He doesn't
9 necessarily know what you mean by the word
10 discovery. And it might clarify things if --

11 MR. FREITAS: Yeah, I think I understand
12 what discovery is. I'm familiar enough with the
13 legal process to understand that.

14 HEARING OFFICER WILLIAMS: Okay, so my
15 thoughts would be, just as any other party, if you
16 have a request you submit it. And the Committee
17 will review it and issue any ruling --

18 MR. FREITAS: I mean there's a
19 procedural process that allows a party to bring in
20 new evidence, isn't there?

21 HEARING OFFICER WILLIAMS: Sure, you can
22 request it.

23 MR. FREITAS: Okay. I think that's the
24 only thing I'm --

25 HEARING OFFICER WILLIAMS: Yes.

1 MR. FREITAS: If you're trying to just
2 do a blanket bar --

3 HEARING OFFICER WILLIAMS: No, no, we're
4 not going to do that --

5 MR. FREITAS: -- a blanket bar for --

6 HEARING OFFICER WILLIAMS: We're not
7 going to issue a ruling that bars, effectively
8 bars you from making a request. We will say,
9 though, that those requests will be scrutinized
10 very closely.

11 MR. FREITAS: Absolutely. I would agree
12 with the Committee on doing that. Just for an
13 example, just so Mr. Kramer knows where I'm coming
14 from, I may be able to produce evidence that's a
15 documented videotape that's already been shown to
16 the Department of Water Resources and the
17 prosecutors for the attorney general's office.

18 Now, if that video can substantiate one
19 of my concerns, which is flooding, in a 25-, 50-
20 or 100-year event, that could consume this site
21 and half the City of San Joaquin, if not all of
22 it, I think that staff and the Committee probably
23 might want to just take a moment to review that
24 video and consider it.

25 That's just an example, just one

1 example. I'm not saying that it will change their
2 minds. I'm not saying that that video will modify
3 the results of the FSA --

4 ASSOCIATE MEMBER GEESMAN: That's
5 correct.

6 MR. FREITAS: -- the FSA -- that it will
7 modify the results of the FSA, but it may be
8 something that may even be utilized by staff to be
9 able to be able to substantiate some of the
10 findings that they have in the FSA.

11 HEARING OFFICER WILLIAMS: Well, my
12 recommendation is this. Is that I take it you
13 haven't filed a prehearing conference statement
14 yet?

15 MR. FREITAS: Yes.

16 HEARING OFFICER WILLIAMS: You have?

17 MR. FREITAS: Yes.

18 HEARING OFFICER WILLIAMS: Okay. In the
19 prehearing conference statement --

20 MR. FREITAS: Oh, I'm sorry, excuse me.
21 I stand corrected. This is a draft that I
22 submitted. I guess it has not been filed yet, but
23 I've submitted the draft this morning by email.

24 HEARING OFFICER WILLIAMS: Okay. So I'm
25 sure the parties haven't seen it. But to the

1 extent that that sets out what your concerns
2 are --

3 MR. FREITAS: Yes.

4 HEARING OFFICER WILLIAMS: -- then the
5 parties will be in a position to at least respond
6 to those issues, those concerns, quickly so that
7 the process isn't slowed down.

8 MR. FREITAS: I don't anticipate that my
9 concerns are going to slow the process down. As a
10 matter of fact, out of the ten concerns that I
11 have listed here that are topic areas that are
12 ready to complete or all ready to proceed to
13 evidentiary hearings, I only have three that may
14 or may not be.

15 And after receiving Roberta's email this
16 morning, and after I reviewed the FSA, I'm
17 probably sure I can probably break that down into
18 maybe one or two.

19 ASSOCIATE MEMBER GEESMAN: What are
20 those three?

21 MR. FREITAS: One of them is the CEQA
22 rubber-stamp approvals that I'm still developing
23 an investigation in this cross-approval process
24 that does not force the project to stand alone
25 regarding the environmental impacts specific to

1 the local region and the proposed site and the
2 surrounding area of impact.

3 I had a concern about the CEQA process,
4 itself, being a rubber-stamp that basically
5 utilizes references and quantifies impacts to this
6 area and this site based on relationships to a
7 completely different geographical location and
8 project.

9 So, I mean if those were addressed, then
10 there would be no more concern.

11 MR. KRAMER: Mr. Williams, perhaps if I
12 can interject something here just on process. Mr.
13 Freitas, one of the difficulties, I guess, that we
14 have here and probably is behind our hesitation
15 somewhat is logistics.

16 We need to make sure that we have the
17 proper experts and witnesses available to cover
18 the areas that you want to cover during hearings.
19 So, if you look in the document we have them
20 separated out by air quality, biology, cultural
21 resources. So if you can identify the areas, the
22 specific areas of topics of discussion we can make
23 sure that we have the experts there available that
24 can answer your questions.

25 MR. FREITAS: And, likewise, I have a

1 list of experts that I've presented here in my
2 draft. I've got a list of 23 experts that I could
3 bring into the process if the other -- if my other
4 concerns are not -- the issues weren't addressed.

5 But I feel like most of those issues, if
6 not all, will be addressed after reviewing this
7 document, and so it will limit that.

8 But out of that 23, that list of 23
9 experts, I believe I could pull someone out of
10 that list that would then be qualified to testify.

11 HEARING OFFICER WILLIAMS: What are the
12 other areas --

13 MR. KRAMER: I'm not sure I understand
14 what the area is for his first topic. He's
15 suggested there's some kind of CEQA defect. And
16 some particular analysis. But he hasn't said
17 which topic area it falls under.

18 HEARING OFFICER WILLIAMS: Well, we can
19 come back to that. What are the other areas?

20 MR. FREITAS: I don't want to call it a
21 defect, but the second area is my developing
22 investigation into the process. And see, this is
23 one example right here. After talking to Mike
24 awhile ago, he answered this question for me, and
25 so I'm going to drop it from my draft.

1 My concern was that one of the
2 motivations and one of the desires of the
3 applicant to proceed ahead with this process, even
4 though it can be publicly perceived that the
5 applicant does not have the financial wherewithal
6 to continue this project out to the end, would be
7 that it was based on the fact that Governor Davis
8 signed and agreed to purchase energy power for
9 \$300 a kilowatt.

10 And then it was later determined that
11 the basis that the Governor used to purchase that
12 power for that price was based on a fraudulent
13 representations by many people in the power
14 industry.

15 So I had a concern that the applicant
16 was maybe involved in a direct way with receiving
17 \$300 a kilowatt for this power.

18 HEARING OFFICER WILLIAMS: And so that's
19 been resolved?

20 MR. FREITAS: Well, yeah, because
21 according to the applicant, as Mike told me, that
22 this project here, and I want to make sure I have
23 it straight for the record -- Mike, you feel free
24 to comment if I say something wrong --

25 MR. ARGENTINE: I think you're doing

1 fine.

2 MR. FREITAS: Okay. My understanding is
3 that this project is a merchant project to this
4 point, and it really has not been based on a
5 preconceived or pre-agreement that kilowatts are
6 going to be sold to the State of California, to
7 Governor Davis for \$300 a kilowatt.

8 MR. ARGENTINE: That's right.

9 MR. FREITAS: Is that correct?

10 MR. ARGENTINE: That's correct.

11 MR. FREITAS: Okay.

12 MR. ARGENTINE: There's no contract,
13 there's no sales contract for the power from this
14 facility.

15 MR. FREITAS: No sales --

16 MR. ARGENTINE: It's a full merchant
17 plant.

18 HEARING OFFICER WILLIAMS: Okay. Next?
19 What was the next one, sir?

20 MR. FREITAS: Okay, then I have a
21 developing investigation -- I had a concern for
22 the financial responsibility of Calpine or the
23 applicant, which is confusing for me. I know that
24 Calpine, as a layperson, I use the word Calpine,
25 say the word Calpine, and I match Calpine to the

1 applicant.

2 But it's my understanding, and Committee
3 and staff can correct me if I'm wrong, that the
4 applicant can actually be changed at any point in
5 this process. Can be substituted, in other words,
6 another entity can be substituted in in the place
7 of the applicant.

8 And so one of my concerns was that if
9 the underlying motivation is to continue the
10 process and the approval and the licensing simply
11 to have a license approved for the sake of some
12 power company to step in and take over and build a
13 plant, then, you know, I'm concerned about the
14 cost of our state's resources to do that. For
15 some unknown, you know, party.

16 So that was one of my concerns, is
17 Calpine, at this point, committed financially,
18 contractually, and a hundred percent to being the
19 party that's going to actually start the process
20 and end the process by building and operating this
21 power plant.

22 Or are we just going to go through the
23 process, get an approval and then have another
24 power company come in and pay Calpine to step out
25 of the way so that they can step in?

1 HEARING OFFICER WILLIAMS: Well, Calpine
2 is this project's developer. And obviously
3 throughout the evidentiary hearings Calpine will
4 be represented by its attorneys and managers and
5 what-have-you.

6 So, it's kind of speculative at this
7 point to deal with that issue because it's just
8 not before us.

9 MR. KRAMER: Also, I'm not sure it's
10 relevant. We don't approve power plants because
11 of the identity of the applicant. We condition
12 them to mitigate all the impacts, and regardless
13 of who the applicant is. And the design is that
14 whoever ultimately builds it will comply with
15 those conditions and a properly operating and
16 constructed power plant will be built.

17 So, in a sense, we are indifferent to
18 who ultimately builds it. And so I don't know
19 that that's even a relevant question for purposes
20 of this proceeding.

21 HEARING OFFICER WILLIAMS: Right. So, I
22 think then that what we're left with, Mr. Freitas,
23 is that there are some 19 topics that we've
24 identified that are fairly much uncontested
25 between staff and applicant.

1 MR. FREITAS: Right.

2 HEARING OFFICER WILLIAMS: And it
3 doesn't sound like the issue you've indicated with
4 CEQA -- and well, of course, flooding. Where
5 would that --

6 MR. FREITAS: Yeah, the waste -- one of
7 the issues is the waste management, and that is in
8 a combined issue with flooding.

9 HEARING OFFICER WILLIAMS: Okay.

10 MR. FREITAS: What we're talking about
11 doing is bringing in -- you're talking about
12 bringing in 7000 acrefeet of what would say, we
13 won't call contaminated water, but in the first
14 public hearing one of the representative of
15 Calpine actually called it sludge.

16 So we can say, because it's gone on the
17 record as being called sludge, and I have the
18 testimony on transcript if we need to go back and
19 find that, that the water was called sludge. So,
20 we're going to end up with the final product in
21 the hands of Calpine, and it's called sludge.

22 And it's going to be sent to a focal
23 point in my backyard. And it's coming from -- in
24 its current state it would be considered probably
25 non-impacting, because it's spread out between

1 billions and billions of gallons of water that's
2 located under acres and acres of ground in south
3 Fresno County.

4 HEARING OFFICER WILLIAMS: Okay, well,
5 then it sounds like your issue is water resources
6 and waste management. So to the extent that we
7 need to perhaps have folks here on those issues,
8 then we will.

9 MR. FREITAS: Okay, I --

10 HEARING OFFICER WILLIAMS: Okay?

11 MR. FREITAS: -- appreciate you taking
12 the time to help me organize my thoughts and my
13 issues.

14 HEARING OFFICER WILLIAMS: I think we've
15 got it fairly clarified. If we need to make some
16 modifications later on, you need to let us know.
17 Because one of the problems we have is the
18 logistics. And if we're going to hold evidentiary
19 hearings down here, then the Energy Commission has
20 lots -- well, other projects going on. And
21 sometimes witnesses in several cases have to
22 almost be in two places at one time.

23 So that's the issue that we're dealing
24 with.

25 MR. HARRIS: Mr. Williams, --

1 HEARING OFFICER WILLIAMS: Yes.

2 MR. HARRIS: -- if I could just for a
3 moment. Keith, I'm not going to take back my lack
4 of --

5 MR. FREITAS: No, it's --

6 MR. HARRIS: -- fine with that --

7 MR. FREITAS: No, that's fine.

8 MR. HARRIS: Yeah, but I do seriously
9 want to get on the record your understanding that
10 this won't result in delay in the schedule. I
11 think that's a number-one threshold issue for us.
12 And it was really the basis for lack of objection.
13 Mr. Kramer is correct, that you are late, but --

14 MR. FREITAS: Right.

15 MR. HARRIS: -- with the understanding
16 it won't delay the overall schedule, I think, you
17 know, we're not objecting. Is that a fair summary
18 of your position?

19 MR. FREITAS: It's a fair summary, but
20 it's a take-back of what you said earlier.
21 Earlier you gave me carte blanche approval, and so
22 I want to go on record making sure that everybody
23 understands that.

24 MR. HARRIS: I certainly didn't intend
25 to take anything back.

1 MR. FREITAS: Okay, as long as we
2 understand that.

3 MR. HARRIS: Right, --

4 ASSOCIATE MEMBER GEESMAN: That may have
5 been before Mr. Harris heard my views on the
6 schedule. The schedule's not going to change.

7 MR. FREITAS: Okay.

8 (Laughter.)

9 MR. HARRIS: A couple other comments I'd
10 like to make quickly. Mr. Kramer is also correct,
11 there are differences between legal issues and
12 factual issues. And maybe you can work with
13 Roberta to figure out the difference between the
14 legal questions and the factual questions.

15 The hearings are about the factual
16 issues, and I think that will even more
17 substantially narrow the issues that you might
18 potentially be interested in.

19 MR. FREITAS: Oh, yeah, and I'm sure
20 that this process affords me the right to
21 intervene legally if it's necessary. So what I'm
22 trying to do is prevent that necessity.

23 HEARING OFFICER WILLIAMS: Well, you're
24 already a party.

25 MR. FREITAS: Right.

1 HEARING OFFICER WILLIAMS: You're
2 already a party.

3 MR. FREITAS: Right.

4 HEARING OFFICER WILLIAMS: So what we
5 want to make clear, though, is as a party you have
6 the responsibilities of a party, which means if
7 you're going to need a witness, or if you're going
8 to need something from either staff or applicant,
9 we got to know about it just really quickly.

10 MR. FREITAS: ASAP. Okay.

11 HEARING OFFICER WILLIAMS: That's right.

12 MR. FREITAS: Have it to you in three
13 days, is that cool?

14 HEARING OFFICER WILLIAMS: Because
15 there's no -- we don't have any --

16 MR. FREITAS: Right. I'll sit down with
17 Roberta right after this --

18 HEARING OFFICER WILLIAMS: And just let
19 us know.

20 MR. FREITAS: -- or during. Yeah.

21 MR. HARRIS: One other comment that I
22 wanted to make is that in addition to your rights
23 as a party, you do have a right to present public
24 comment, as opposed to formal testimony. You said
25 23 witnesses. I didn't fall out of the chair

1 literally, but I sort of did.

2 Also keep in mind that public comment is
3 another avenue for you to share your views with
4 the decision makers, and that may be a way to,
5 again, further narrow the issues and insure that
6 there isn't any delay.

7 HEARING OFFICER WILLIAMS: Roberta, I
8 take it that we're going to have that prehearing
9 conference statement filed today?

10 MS. MENDONCA: Yes, yes.

11 HEARING OFFICER WILLIAMS: Okay.

12 MS. MENDONCA: The public comment is my
13 segue to say I'm sorry I was busy earlier. I
14 didn't introduce myself. For the record, Roberta
15 Mendonca, the Public Adviser, is here. And I
16 would like to just briefly say to the members of
17 the public who are in the audience that are not
18 parties to the case, that we set up our process as
19 an open public process; and public comment, verbal
20 or written, is welcome at any time in any of our
21 proceedings, and gets into the record.

22 My office, my business cards are back
23 there, is here to assist you if you wish to make
24 public comment. And so, please, hello, I'm
25 Roberta, and let's talk if you'd like to, after

1 the meeting.

2 Thank you very much.

3 HEARING OFFICER WILLIAMS: I see also
4 that -- thank you, Roberta -- that we have other
5 public officials who have arrived. Ms. Sutton,
6 could you come up and introduce yourself, please.
7 Any remarks that you may have? Certainly.

8 MS. SUTTON: Thank you so much. My name
9 is Feleena Sutton, and I'm employed by
10 Assemblymember Sarah Reyes, who represents the
11 31st Assembly District where you are sitting.

12 So I come first to say welcome. I'm
13 beginning to see some of you so often here that I
14 think I need to put you on my Christmas card list.
15 You're all starting to look a little too familiar.
16 We need to get this project done is where I'm
17 going with that.

18 We have previously gone on record, the
19 Assemblymember, saying that she supports the
20 project. And we are here at your disposal to help
21 you, to help Calpine, to help any consultant for
22 which we can be of assistance, or any constituent,
23 as well.

24 So, thank you for coming. Let me know
25 how I can help.

1 HEARING OFFICER WILLIAMS: Thank you,
2 Ms. Sutton.

3 ASSOCIATE MEMBER GEESMAN: Thank you,
4 appreciate it.

5 HEARING OFFICER WILLIAMS: Mr. Manfredi,
6 the City Manager of Kerman, is also present.

7 MR. MANFREDI: Everybody's still taller
8 than Ms. Sutton here, so I have to adjust this.

9 (Laughter.)

10 MR. MANFREDI: My name is Ron Manfredi.
11 I'm City Manager for the City of Kerman. I also
12 represent the I-5 Business Development Corridor
13 which is a regional economic development body on
14 the west side, here.

15 We've been long-time supporters of this
16 plant, the siting of this plant. And all I want
17 to express is that we do understand there's some
18 air quality issues that have to be addressed.
19 Those are the issues we think that all the energy
20 should be put forth regarding.

21 And as far as I understood the siting of
22 the plant went through a long environmental
23 process that's already been decided. I'm not sure
24 why there's discussion on that.

25 But we are talking about the economic

1 vitality of this region. And, of course, the
2 siting of a energy plant in the Central Valley for
3 delivery. So we very much support it and we'd
4 like to be part of the solution.

5 Thank you.

6 ASSOCIATE MEMBER GEESMAN: Mr. Manfredi,
7 let me say that I think when we use the word
8 siting we mean it to encompass the entire
9 licensing process that the Energy Commission goes
10 through to render a decision on whether the
11 project should receive a construction permit.

12 MR. MANFREDI: I understand that. But
13 when I refer to the term siting, I mean siting in
14 a specific location.

15 ASSOCIATE MEMBER GEESMAN: Finding the
16 location, yes.

17 MR. MANFREDI: Yes, and I thought that
18 was decided. Thank you.

19 HEARING OFFICER WILLIAMS: Thank you,
20 sir. Okay, then I think to the extent that we
21 have a consensus is that perhaps the uncontested
22 issues will be heard in Sacramento. And then
23 we'll at least contemplate hearing the contested
24 issues, which I understand right now are visual
25 resources, noise and, of course, air quality,

1 which is the issue that will probably take more
2 time than any other, and will require witnesses to
3 be brought in, I think from EPA or whatever.

4 MR. KRAMER: Yes, one representative of
5 the EPA.

6 HEARING OFFICER WILLIAMS: So, what day
7 is he available now?

8 MR. KRAMER: We were checking with his
9 schedule. They had not heard back from him. But
10 we believe he's available during the period that
11 you're talking about.

12 HEARING OFFICER WILLIAMS: So, the 20th,
13 then, perhaps might be --

14 MR. KRAMER: Before you go further I
15 wanted to point out that Mr. Harris, in his
16 filing, suggested that as to all the issues that
17 they filed a 200-and-some-page document on Monday
18 evening proposing various what they care to
19 address as minor changes to the staff's proposed
20 conditions.

21 We have not been able to review those
22 yet and we are not sure if we will agree with his
23 requests or not.

24 We do not agree with his suggestion that
25 in the event we do not agree that the Committee

1 simply decide the matter based on his request and
2 our earlier documents. And we need to reserve the
3 opportunity to provide you with some testimony
4 explaining our position.

5 So that may mean that instead of just
6 the three issues, you may have two or three or
7 four, five, six, seven, eight more. We just can't
8 tell you at this point.

9 HEARING OFFICER WILLIAMS: Okay.

10 MR. HARRIS: Just one point of
11 clarification. Our statement was we believe they
12 wouldn't require further adjudication. If the
13 staff would like to cross our witnesses, we'll
14 make them available.

15 It's also not our position that staff
16 has to accept those minor changes to the
17 conditions that we've suggested. It is our
18 position that we think that they're sufficiently
19 clear that the Committee could make the decision
20 without witnesses. But we're not seeking to
21 curtail anybody's right to participate in that
22 regard.

23 And so Mr. Kramer is correct; they've
24 received our proposed conditions in final form
25 late Monday. I suppose they probably need some

1 time to look at those.

2 One issue that I want to turn back to is
3 the issue of air quality. We note, I guess with a
4 little bit of surprise, that the staff is not
5 offering the San Joaquin Valley Air Pollution
6 Control District as a witness on air quality. In
7 my view, that's unprecedented. I'm not aware of a
8 Commission siting case where the local Air
9 District has not been allowed -- or been asked to
10 testify.

11 HEARING OFFICER WILLIAMS: Why don't you
12 stop right there. Are they going to be here?

13 MR. KRAMER: We were proposing to simply
14 stipulate to enter the FDOC into the record.

15 HEARING OFFICER WILLIAMS: I don't think
16 that's a good idea. I think you ought to have the
17 San Joaquin Air District here.

18 MR. KRAMER: Okay, understanding that we
19 do not believe that their product is adequate, we
20 should nonetheless sponsor that as our testimony?
21 That's where we're coming from.

22 HEARING OFFICER WILLIAMS: Well, the
23 Committee could sponsor it. I think they should
24 be here.

25 MR. HARRIS: Mr. Williams, I think

1 you're right. As a responsible agency in this
2 case, even --

3 HEARING OFFICER WILLIAMS: Yeah.

4 MR. HARRIS: -- if staff disagrees with
5 the position set forth by responsible --

6 HEARING OFFICER WILLIAMS: Yeah, I mean
7 you don't have to sponsor them. We might need you
8 to help coordinate their presence here.

9 MR. KRAMER: We can certainly do that.

10 HEARING OFFICER WILLIAMS: Yeah. But
11 the Committee can sponsor them.

12 MR. KRAMER: Okay, because our position
13 is we've got the paper; we'd like to spend our
14 time telling you what's wrong with it, rather
15 than --

16 HEARING OFFICER WILLIAMS: Right.

17 MR. KRAMER: And not by beating them up.

18 HEARING OFFICER WILLIAMS: Right, I
19 understand. Can you just -- do you have any idea
20 of their availability for the days that we've
21 marked off?

22 MR. TRASK: We can certainly check and
23 get back to you within a couple of days.

24 MR. KRAMER: Given that they could
25 probably send one of several people, I don't

1 believe it will be an issue.

2 HEARING OFFICER WILLIAMS: Right, okay.
3 So we will have them here and the Committee will
4 sponsor San Joaquin.

5 MR. HARRIS: Our air witness, who is
6 also one of our witnesses on visual, Mr.
7 Rubenstein, and this is in our prehearing
8 conference statement, has a potential conflict
9 towards the end of the scheduling period that
10 you've offered, the 18th to the 21st. And so I'd
11 want to focus on the early days for the air, so
12 Mr. Rubenstein can be available; followed by
13 visual, again so Mr Rubenstein can be available.

14 To the extent you're looking at days to
15 get the District here, I'd like to try to look at
16 those earlier days if we could.

17 HEARING OFFICER WILLIAMS: Okay, well,
18 let's look at the 19th for the air testimony.

19 MR. KRAMER: Do you have the location
20 picked out yet?

21 HEARING OFFICER WILLIAMS: No, but I
22 think -- let's go off the record for a second.

23 (Off the record.)

24 HEARING OFFICER WILLIAMS: Then we will,
25 let's plan on the 19th for air. And I can't tell

1 you the location right now, but if you could check
2 availability on the 19th, and get back to us, that
3 would be a big help.

4 MR. HARRIS: Mr. Williams, if I might,
5 there's a possibility, if we are successful in
6 coming to agreement on those uncontested issues,
7 that that wouldn't take the entire day on the
8 18th.

9 So, as one suggestion, and again I think
10 you don't have to decide these things today, but
11 we're just offering suggestions.

12 HEARING OFFICER WILLIAMS: Right.

13 MR. HARRIS: One suggestion would be to
14 notice it such that the uncontested issues begin
15 the morning of the 18th. Notice it so that on
16 that same day, on the 18th, we could begin air
17 quality. So if we have an afternoon available
18 with folks there we can start that subject and
19 maybe end it. And if we don't have time, we
20 continue it to the 19th.

21 Then again, just offer that as a
22 suggestion.

23 HEARING OFFICER WILLIAMS: Okay.

24 MR. TRASK: Staff may have a difficulty
25 with that in that our primary air quality witness

1 is in from southern California, will have to
2 travel up. But if the 19th hearing was in
3 Sacramento, that would probably resolve that
4 problem.

5 MR. KRAMER: Given that it's a three-day
6 weekend that ends on the 17th, I'm coming back
7 from a week-long vacation hopefully the morning of
8 the 17th. I'd prefer not to start the first thing
9 Tuesday morning if we could avoid that, so I have
10 a little bit of time to finally have a final
11 caucus with my clients and get things together.

12 HEARING OFFICER WILLIAMS: Okay.

13 MR. FREITAS: What month are you guys
14 in?

15 MR. KRAMER: February.

16 HEARING OFFICER WILLIAMS: We're talking
17 February. We're talking February, and it sounds
18 like what we're going to do is start up on the
19 uncontested issues on the 18th. And considering
20 the fact that there are at least some points of
21 discussion that remain in other than the seven
22 completely uncontested issues, then we might end
23 up trying to resolve those on the 18th, as well.

24 I think for all practical purposes, to
25 help logistics, the parties should really plan on

1 starting air quality fresh on the 19th. And using
2 the 18th to try to work out some of the issues
3 that may come up with respect to the somewhat
4 uncontested topics.

5 MR. HARRIS: Mr. Williams, one other
6 consideration. We think we might be able to
7 finish the contested issues in a single day. So,
8 add that into your thinking when you're thinking
9 about splitting time between Sacramento and San
10 Joaquin, as well.

11 HEARING OFFICER WILLIAMS: Right.

12 MR. FREITAS: Mr. Williams, I'd like to
13 take advantage of this moment here to take him up
14 on his offer -- I'm sorry --

15 MR. HARRIS: It's Jeff Harris.

16 MR. FREITAS: Jeff, Jeff. Is it all
17 right if I call you Jeff?

18 MR. HARRIS: Please, I'd prefer that.

19 MR. FREITAS: Thank you. -- Jeff's
20 offer of interviewing or at least cross-examining
21 his witnesses on just three subjects, or at least
22 having staff or the Committee have Dr. Greenberg
23 available, just on the soil and water, waste
24 management and public health. It won't take me
25 more than probably 15, 20 minutes of cross-

1 examination to be able to be satisfied with what I
2 need --

3 MR. TRASK: I'm sorry, you said three
4 areas are soil --

5 MR. FREITAS: So I'd be willing to
6 stipulate to that.

7 MR. TRASK: Okay, but you said the three
8 areas are soil and water, waste management and
9 public health?

10 MR. FREITAS: Yeah, soil and water,
11 waste management and public health.

12 MR. TRASK: Dr. Greenberg would be for
13 two of those areas.

14 MR. FREITAS: Okay.

15 MR. TRASK: Then we'd have to bring
16 another for soil and water.

17 MR. FREITAS: I don't know who would be
18 for -- which two?

19 MR. TRASK: Dr. Greenberg would be for
20 waste management and public health. At the
21 beginning of each section in the staff assessment
22 you'll see the names of the experts for those
23 areas. And soil and water, there's actually five
24 people who worked on it, so it would be, depending
25 on the specific topic areas within soil and water,

1 which one we would want to produce.

2 MR. FREITAS: Okay.

3 MR. KRAMER: Dr. Greenberg is probably,
4 of our witnesses, the guy most likely to have a
5 conflict, because he works on every case it would
6 seem. But we'll check on his schedule and get
7 back to you as soon as we can.

8 MR. FREITAS: That was just a suggestion
9 to try to --

10 HEARING OFFICER WILLIAMS: Okay.

11 MR. FREITAS: -- you know, not be a
12 delay.

13 HEARING OFFICER WILLIAMS: Now, in terms
14 of air quality, what precisely is the status of
15 the FDOC?

16 MR. TRASK: The Air District has issued
17 a statement to us that they stand by the FDOC and
18 have no plans to withdraw it.

19 HEARING OFFICER WILLIAMS: Okay. All
20 right.

21 ASSOCIATE MEMBER GEESMAN: Let me jump
22 in here on air quality. I've read the prehearing
23 conference statements, both the staff and the
24 applicant. And my question is before we go to the
25 evidentiary hearings, which in my mind are

1 primarily --

2 UNIDENTIFIED SPEAKER: Please speak up.

3 ASSOCIATE MEMBER GEESMAN: Before we go
4 to the evidentiary hearings, which in my mind are
5 primarily focused on factual questions, is there
6 an ability to narrow whatever legal differences or
7 statutory interpretation differences may exist
8 between the two parties?

9 Am I correct in assuming that you do
10 have differences over statutory interpretation?

11 MR. HARRIS: Mr. Geesman, I think that
12 is correct. A couple of comments. Number one, on
13 air quality the vast majority of the issues
14 there's complete agreement.

15 We're really just down to the questions
16 about the ERCs. And even in that connection, I
17 think that the staff has a different view than the
18 Air District. And I'm not so sure it's going to
19 take a lot of time to explain those differences.

20 Some of those differences are legal
21 questions. I think they go to issues such as
22 whether a memo from the EPA is a LORS, is a
23 binding precedent. But that's not something that
24 requires factual discovery. So --

25 ASSOCIATE MEMBER GEESMAN: It would seem

1 to me easier for the Committee to resolve legal
2 questions based on written filings from the
3 applicant and staff than for taking up time during
4 evidentiary hearings.

5 MR. KRAMER: Well, there will be a few
6 facts that we need to elicit, and then, of course,
7 we'd --

8 ASSOCIATE MEMBER GEESMAN: I don't doubt
9 that.

10 MR. KRAMER: -- we'd expect to brief the
11 matter afterwards.

12 ASSOCIATE MEMBER GEESMAN: But could we
13 compress the need for evidentiary hearings on air
14 quality by getting some of the questions of
15 statutory interpretation ruled upon in advance of
16 those evidentiary hearings?

17 MR. KRAMER: In effect you'd be ruling
18 on a hypothetical question, which, at a minimum,
19 would be awkward because you haven't the facts
20 before you yet at that point.

21 ASSOCIATE MEMBER GEESMAN: So this isn't
22 a -- it's more than simply a question of what
23 particular sections of the Public Resources Code
24 say or mean? Something that really does require
25 the illumination of the facts that will come out

1 in the evidentiary hearings?

2 MR. KRAMER: We believe so. I think
3 Jeff would agree.

4 MR. HARRIS: I agree that there are some
5 legal questions. I think this is also an
6 opportunity for us, as was done in the Russell
7 City case, on a contested issue, and it's slipping
8 my mind which one it was right now, where staff
9 and applicant got together and basically agreed to
10 a joint statement of here are the issues, here are
11 the facts that we agree upon, and here's where we
12 disagree.

13 We'd be willing to work with the staff
14 to try to come up with some kind of joint -- I
15 don't want to call it, it's not a stipulation, but
16 I guess a statement of facts.

17 MR. FREITAS: Would that preempt,
18 though? Would that statement of facts preempt the
19 public's invitation --

20 MR. HARRIS: No.

21 MR. FREITAS: -- to be able to make
22 comment or --

23 ASSOCIATE MEMBER GEESMAN: No.

24 MR. FREITAS: -- you know, impact
25 because --

1 ASSOCIATE MEMBER GEESMAN: No. Mr.
2 Kramer, how do you react to that?

3 MR. KRAMER: We can certainly make that
4 effort. We're only talking about tow hours, I
5 think, from our estimates of the direct and cross-
6 examination, maybe three. So, there may not be
7 that much time that you can save, in any event.

8 ASSOCIATE MEMBER GEESMAN: Okay.

9 MR. HARRIS: I just asked Mr. Wheatland
10 to refresh my memory. In Russell City there was
11 an issue related to the radio tower. And the
12 staff and the applicant basically agreed to a set
13 of facts, and the public was allowed to comment on
14 those.

15 And that narrowed the universe of what
16 the discussion had to be about. And we really
17 were left pretty much with legal questions at that
18 point. And so, --

19 HEARING OFFICER WILLIAMS: If the
20 parties could do that, and let us know on the, I
21 guess the 18th, that would be very helpful.

22 MR. HARRIS: Sure.

23 HEARING OFFICER WILLIAMS: In fact, we
24 might as well enlarge it to -- staff, you will
25 have had sufficient time by then to review the

1 prefiled testimony, and to the extent that there's
2 a workable arrangement on all those issues, as
3 well, that would be very helpful. And we'll know
4 where we stand.

5 MR. KRAMER: We can certainly do that.

6 HEARING OFFICER WILLIAMS: Okay.

7 MR. FREITAS: What happened to the --
8 why don't I suggest this. Why would you even have
9 to have a hearing if you've already proven through
10 investigation in your staff report -- in the
11 original public hearing they held, the applicant
12 made the comment that we actually conduct a health
13 assessment that says if a person standing at the
14 area of maximum concentration of emissions for the
15 plant, if they were there what would their health
16 effects be. And we have to get that down to a
17 level that says there would be no health impacts.

18 Well, if they've --

19 HEARING OFFICER WILLIAMS: Mr. Freitas,
20 I think that's a --

21 MR. FREITAS: -- if you've already
22 discovered --

23 HEARING OFFICER WILLIAMS: -- process
24 question. You see --

25 MR. FREITAS: If there's no health

1 impacts then what is there a reason to talk about
2 it anymore?

3 MR. TRASK: It's basically to do with
4 what we call the mitigation of the impact. Any
5 time that you realize that there could be a
6 significant impact created by a project, as
7 defined by certain criteria that's in law or known
8 standards, then we come up with the actions that
9 would reduce that impact to an acceptable level.
10 We call that mitigation.

11 In this case the mitigation that they're
12 offering for the air quality emissions that
13 they're going to be producing are emission
14 reduction credits that they purchased from other
15 companies who did something in the past to reduce
16 their own emissions. And then they earn these
17 credits which they can then market to other
18 companies that are then used as mitigation for the
19 air quality impact.

20 MR. FREITAS: And those prevent health
21 impacts, direct health impacts at the site? I
22 think Archie Crippen (phonetic) would like to know
23 that.

24 HEARING OFFICER WILLIAMS: Let me just
25 say --

1 MR. KRAMER: I think this --

2 HEARING OFFICER WILLIAMS: Let me just
3 say this. Mr. Freitas, I assumed that your
4 question was about the process.

5 MR. FREITAS: Yeah, well, it is.

6 HEARING OFFICER WILLIAMS: Let me
7 finish, let me finish.

8 MR. FREITAS: I mean I'm trying to help
9 you guys --

10 HEARING OFFICER WILLIAMS: Let me
11 finish.

12 MR. FREITAS: -- get to a point.

13 HEARING OFFICER WILLIAMS: Let me
14 finish. Okay. Now, whatever documents and papers
15 that have been filed thus far in the case, they're
16 not part of an evidentiary record.

17 MR. FREITAS: They're not.

18 HEARING OFFICER WILLIAMS: They're not.
19 That's why we have the hearings.

20 MR. FREITAS: Okay.

21 HEARING OFFICER WILLIAMS: We have the
22 evidentiary hearings to receive all those
23 documents and to compile the evidentiary record
24 which then becomes the court record of the case.

25 MR. FREITAS: But if everything's

1 stipulated out before you --

2 HEARING OFFICER WILLIAMS: It doesn't
3 matter.

4 MR. FREITAS: -- receive those -- it
5 doesn't matter?

6 HEARING OFFICER WILLIAMS: It doesn't
7 matter. The Committee does not accept the
8 stipulation outside -- we can't accept it outside
9 the evidentiary record. We have to have a
10 hearing, an evidentiary hearing to accept those
11 stipulations formally, and to receive that
12 material into an evidentiary record. It can't be
13 done informally.

14 MR. FREITAS: Thank you for explaining
15 that to me, --

16 HEARING OFFICER WILLIAMS: Okay.

17 MR. FREITAS: -- Mr. Williams.

18 HEARING OFFICER WILLIAMS: That's why
19 there's a need, an absolute requirement that we
20 have the evidentiary hearings to receive the
21 evidence of the case.

22 MR. FREITAS: Thank you.

23 HEARING OFFICER WILLIAMS: Okay? Okay,
24 so where does that leave us?

25 ASSOCIATE MEMBER GEESMAN: I've got

1 noise. The applicant contemplates five noise
2 witnesses?

3 MR. HARRIS: Yeah, one written set of
4 testimony sponsored by five witnesses, and the
5 reason for that is noise involves both the LORS,
6 as used in the technical issues, and also some of
7 the issues related to the -- we're going to make a
8 panel available for that. We'll probably have
9 one, maybe two witnesses act as our lead on that
10 panel.

11 Again, though, I guess I'd point out
12 that I think the issues are relatively narrow. We
13 think that there's a showing of compliance with
14 LORS, and the issue comes down to whether there
15 might be a potentially significant impact under
16 CEQA.

17 And in that connection we'll be talking
18 both about staff's methodology and our
19 understanding of what the case law holds. But,
20 we've requested, I believe, an hour for that
21 testimony. We may be able to better that, as
22 well, depending on how many witnesses we decide to
23 go with for our direct.

24 But it is a highly technical area. I
25 think it's good that it goes last for that reason.

1 It's going to require, I think, the most
2 concentration. It is probably the area where
3 there's the most, I think, disagreement between
4 staff and applicant as technical issues and the
5 methodologies. We really anticipate that to be
6 one of the larger issues.

7 HEARING OFFICER WILLIAMS: I think
8 that's a good recommendation that we handle noise
9 last. So I think we probably all are in agreement
10 then that of the contested issues that we will
11 deal with air quality first, visual in between,
12 and noise. And the parties will try to reach an
13 accommodation on their outstanding matters that
14 we've discussed today.

15 We know we have seven purely uncontested
16 topics. Applicant's filing on Monday revealed
17 certain areas of minor contention, perhaps, in the
18 other areas that were set forth in the prehearing
19 conference statement. And the parties will try to
20 reach some kind of joint stipulation with respect
21 to those matters that we'll take up on the 18th.

22 MR. KRAMER: I think Mr. Freitas wanted
23 to take public health off the list of fully
24 uncontested --

25 HEARING OFFICER WILLIAMS: Right, right,

1 so we might be -- that's something that we might
2 be able to take up on the 18th, as well. So, --

3 MR. FREITAS: Did you have a date
4 scheduled for the air -- for the noise?

5 HEARING OFFICER WILLIAMS: No, not yet.
6 But, again, we're going to do everything between
7 the 18th and the 21st. The 18th, 19th, 20th and
8 21st.

9 MR. FREITAS: On all the uncontested?

10 HEARING OFFICER WILLIAMS: Yes. And
11 we're going to try to -- we might be able to
12 finish it on the 19th depending upon how
13 cooperative everyone is.

14 So we know we're going to be in hearings
15 on the 18th and the 19th. We just don't know
16 beyond the 19th if we'll need the 20th or the
17 21st.

18 MR. FREITAS: Those will all be in
19 Sacramento, too, right?

20 HEARING OFFICER WILLIAMS: Not
21 necessarily, no.

22 MR. FREITAS: Okay.

23 HEARING OFFICER WILLIAMS: The consensus
24 is that we'll do at least the 18th in Sacramento;
25 and probably the likelihood is great that we'll do

1 the 19th here. But it's not been decided yet.

2 So for planning purposes you can plan on
3 the 18th in Sacramento and the 19th here.

4 MR. FREITAS: I'm just saying, you know,
5 if you look around you, Mr. Williams, you're in a
6 community that's financially devastated. It's an
7 agricultural community. And I'm looking at a
8 bunch of professionals here that I know make over
9 \$100,000 a year.

10 It would be much less of an
11 inconvenience for those professionals to come here
12 so that this financially devastated community
13 didn't have to pay to go there.

14 ASSOCIATE MEMBER GEESMAN: We'll come
15 here for one day of hearings.

16 MR. FREITAS: You know, one day of
17 hearings, thank you very much, Mr. Geesman.

18 ASSOCIATE MEMBER GEESMAN: You're
19 welcome.

20 HEARING OFFICER WILLIAMS: And we may be
21 able to complete the hearings, the contested
22 issues here in that one day.

23 MR. FREITAS: I'm just saying to
24 consider it, you know, consider it.

25 MR. HARRIS: Mr. Williams, if I might,

1 too, I think in the past the Commission has used
2 the telephone bridge, for a lot of people to dial
3 in.

4 HEARING OFFICER WILLIAMS: Right.

5 MR. HARRIS: And on uncontested it might
6 be a great day just to listen in.

7 MR. FREITAS: That's, yeah, just any way
8 to --

9 HEARING OFFICER WILLIAMS: Oh,
10 certainly.

11 MR. FREITAS: Any consideration, you
12 know, --

13 HEARING OFFICER WILLIAMS: Certainly,
14 certainly. We'll have a telephone link for all
15 the hearings. We will do that. At least all the
16 hearings in Sacramento.

17 MR. FREITAS: Thanks, Jeff.

18 HEARING OFFICER WILLIAMS: Okay? We'll
19 definitely have a telephone hookup for those.

20 ASSOCIATE MEMBER GEESMAN: Mr. Kramer
21 requested that we start the hearings on the 18th
22 at midday so that he would have a chance to confer
23 with his client and his witnesses. Is there a
24 problem with that from the applicant's standpoint?

25 MR. HARRIS: No, I don't believe so.

1 ASSOCIATE MEMBER GEESMAN: I have to say
2 on the 20th I'm only available half of the day, so
3 the 20th, if we use the 20th, will have to be in
4 Sacramento. So that narrows our window for --

5 MR. KRAMER: Well, okay, how about 10:00
6 a.m.? Although realistically we're talking about
7 uncontested issues. We wouldn't start air quality
8 until the 19th.

9 HEARING OFFICER WILLIAMS: Right.

10 MR. KRAMER: So, it probably won't
11 matter, but 10:00 a.m. is enough time for me.

12 MR. FREITAS: I got to drive from
13 Fresno.

14 ASSOCIATE MEMBER GEESMAN: Excuse me?

15 MR. FREITAS: I have to drive from
16 Fresno. Can I be there?

17 ASSOCIATE MEMBER GEESMAN: You're
18 certainly welcome to attend any of our hearings.

19 MR. FREITAS: Is it okay?

20 ASSOCIATE MEMBER GEESMAN: We will have
21 a telephone bridge to the hearing --

22 MR. FREITAS: Okay.

23 ASSOCIATE MEMBER GEESMAN: -- on the
24 18th.

25 MR. FREITAS: Okay.

1 ASSOCIATE MEMBER GEESMAN: My next
2 question is --

3 MR. FREITAS: If it's foggy, I'm just --
4 you know, just worried about --

5 ASSOCIATE MEMBER GEESMAN: -- as it
6 relates to the air quality witnesses, we have them
7 on the 19th. Is there a problem getting them
8 here?

9 MR. KRAMER: No, I think that's probably
10 easier for them on the 18th, due to the holiday.
11 So -- no, he's in L.A., right? Actually he's in
12 Thousand Oaks area, so he can drive up here.

13 ASSOCIATE MEMBER GEESMAN: Okay. Why
14 don't we simply do the 19th here.

15 HEARING OFFICER WILLIAMS: Okay, the
16 19th is here. Mr. Freitas, I would also recommend
17 that you look, if you do have to come to
18 Sacramento, and you don't want to take advantage
19 of the phone link, I would recommend you look at
20 Amtrak as an alternative to driving up there, if
21 it comes to that. Their service is -- I use it,
22 the service is fairly good.

23 MR. FREITAS: Thanks for the suggestion.

24 HEARING OFFICER WILLIAMS: Okay, so --

25 MR. FREITAS: Appreciate that.

1 HEARING OFFICER WILLIAMS: -- so take a
2 look at that as an option. There are -- you can
3 do your work; they have --

4 MR. FREITAS: Yeah.

5 HEARING OFFICER WILLIAMS: -- a good
6 setup there.

7 MR. FREITAS: Thank you.

8 HEARING OFFICER WILLIAMS: Okay. So the
9 19th will be here. Is there any suggestions or
10 recommendations for start time, 10:00?

11 MR. HARRIS: On the 19th?

12 HEARING OFFICER WILLIAMS: On the 19th.

13 MR. HARRIS: That's fine.

14 HEARING OFFICER WILLIAMS: Okay. So,
15 10:00 in Sacramento on the 18th and 10:00 on the
16 19th in -- here. And if we have to go to the 20th
17 we will be back in Sacramento. We'll have a phone
18 link for those who aren't.

19 Okay, --

20 MR. FREITAS: Do you have an address or
21 location?

22 HEARING OFFICER WILLIAMS: You can get
23 that from Roberta.

24 MR. FREITAS: Okay.

25 ASSOCIATE MEMBER GEESMAN: Very quickly,

1 it's 1516 Ninth Street in Sacramento. And I
2 believe we've got hearing room B reserved.

3 HEARING OFFICER WILLIAMS: That's
4 correct.

5 MR. HARRIS: Mr. Williams, --

6 HEARING OFFICER WILLIAMS: Yes.

7 MR. HARRIS: -- one more administrative
8 issue. We have not filed testimony on two areas,
9 those are air quality and noise. We are close to
10 having those ready to be filed. I actually wanted
11 to hang onto them for a little while to see if
12 things could be resolved out. But obviously we
13 need to give staff time to review that in advance
14 of the hearings.

15 So, I think our draft will be due on
16 Monday, but I was going to ask for a little
17 lenience to file that on Tuesday the 4th. That's
18 a full two weeks ahead of the hearing.

19 And also ask that if staff's going to be
20 filing any responsive testimony, I know
21 technically staff doesn't have a right to
22 rebuttal, but often staff will file an addendum.

23 If they're going to file an addendum
24 maybe the following week on the 11th, on or before
25 the 11th, which would give us a week to review

1 that before hearings.

2 I haven't proposed it to staff, so I
3 throw it on the table, getting them cold, so I
4 hope I haven't caught you flat-footed, Matt, but
5 that's a schedule that would work for us.

6 HEARING OFFICER WILLIAMS: Yeah, that
7 seems to be workable, especially since you all are
8 going to be talking about a joint statement. So,
9 do you have any problem with that, Mr. Kramer?

10 MR. KRAMER: Well, I mean we were hoping
11 for a little more, as of today. But I think that
12 will work. The joint statement could come at
13 anytime, I think it wouldn't necessarily be on
14 this timetable, though, right?

15 MR. HARRIS: I think that's correct.

16 HEARING OFFICER WILLIAMS: Okay, that's
17 workable. We'll certainly do that.

18 MR. KRAMER: There would be some
19 additional testimony on visual, as well, would
20 there not?

21 MR. HARRIS: No, I believe the entire
22 visual testimony has been filed. There really are
23 only two contested conditions in that entire
24 thing.

25 MR. KRAMER: Okay, yeah.

1 MR. HARRIS: And VIS-2 related to
2 landscaping --

3 MR. KRAMER: I haven't gotten through it
4 yet so I didn't see it.

5 HEARING OFFICER WILLIAMS: Okay.

6 MR. FREITAS: I have a procedural
7 question.

8 HEARING OFFICER WILLIAMS: Yes, sir.

9 MR. FREITAS: Is there a rule that would
10 preclude me from bringing somebody with me to sit
11 at the table with me at the hearing?

12 HEARING OFFICER WILLIAMS: No.

13 MR. FREITAS: No?

14 HEARING OFFICER WILLIAMS: No.

15 MR. FREITAS: Okay.

16 HEARING OFFICER WILLIAMS: Not at all.

17 MR. FREITAS: Thank you.

18 HEARING OFFICER WILLIAMS: Okay, Ms.
19 Mendonca has given me some more cards here. And I
20 see we have another government official from the
21 County of Fresno. Sir, could you come forward and
22 introduce yourself? Thank you. This mike might
23 be better for you.

24 MR. ARAMBULA: Good afternoon, thank you
25 for the opportunity to come and share a few words

1 with you and your fellow Commissioners.

2 My name is Juan Arambula and I'm the
3 Chairman of the Board of Supervisors for Fresno
4 County. And I'm here today simply to express our
5 strong support for the project, and to let you
6 know the County believes very strongly that this
7 project will be good for the City, as well as the
8 County, and indeed, the entire region.

9 And whatever we can do we stand prepared
10 to assist in any way to make sure that this
11 project is successful. We think it is vital for
12 the economic well being of the entire Valley.

13 And on behalf of my fellow Supervisors,
14 I came to convey that to you. And, again,
15 whatever assistance we can provide, feel free to
16 call upon us and we will be very appreciative of
17 any favorable actions that you take.

18 HEARING OFFICER WILLIAMS: Thank you,
19 sir.

20 ASSOCIATE MEMBER GEESMAN: Thank you for
21 your comments, Mr. Arambula.

22 HEARING OFFICER WILLIAMS: Roberta, it
23 appears on the 19th that we may have a sizable
24 contingent, perhaps government officials and
25 whomever, for public comment.

1 So I don't know if you may want to block
2 off some time on the 19th so we can have it
3 certain, rather than have people, you know,
4 interrupt the official process.

5 So maybe you can let us know one way or
6 another if it would be more convenient to block
7 off a time where we could take public comment on
8 the 19th.

9 MS. MENDONCA: Okay. Yes.

10 HEARING OFFICER WILLIAMS: Thank you.
11 And we also have, from the Plumbers Pipe Union,
12 Mr. Bob Jennings, the Business Manager. Is he
13 here?

14 UNIDENTIFIED SPEAKER: He stepped out, I
15 believe, on a cell phone call.

16 HEARING OFFICER WILLIAMS: Oh, okay.
17 Well, I'm sure Mr. Yancey, as a Field Rep, can
18 fill in for him. Did he step out, too?

19 ASSOCIATE MEMBER GEESMAN: Same call.

20 UNIDENTIFIED SPEAKER: (inaudible).

21 (Laughter.)

22 HEARING OFFICER WILLIAMS: Is there
23 anything else that we need to take up today?
24 Certainly we will get to work right away on the
25 notice of evidentiary hearing. And certainly if

1 we can pull it together we'll get it out this week
2 so you all will know precisely what the plan is.
3 But certainly no later than early next week.

4 MR. FREITAS: I just want to make sure
5 it will go in the record and everybody knows, I'm
6 not here to try to stall, prevent, you know, in
7 any negative way impact this process. I'd love to
8 have this plant come here. I mean it would
9 probably increase the value of our property.

10 But I don't want to, you know, just do
11 those things to rubber-stamp something without,
12 you know, feeling responsible enough to --

13 HEARING OFFICER WILLIAMS: We welcome
14 your participation, sir. And --

15 MR. FREITAS: That's --

16 HEARING OFFICER WILLIAMS: And certainly
17 I would encourage you to work with Roberta. We
18 have an excellent Public Adviser, and she will
19 guide you through the process. And if you have
20 any questions, take them up with her. If you have
21 any legal questions about the plant, we can try to
22 answer them. So, --

23 MR. FREITAS: I mean this City just got
24 defaulted on -- somebody defaulted on a \$51
25 billion bond that they wrote on the back of the

1 City. And so things like this can happen. Big
2 people come here; they can utilize these little
3 small agricultural towns. And I just want to make
4 sure, because once that's happened it's too late.
5 Once the approval process is approved, it's too
6 late.

7 HEARING OFFICER WILLIAMS: Well, you'll
8 certainly have the opportunity to voice your
9 opinions. Okay.

10 ASSOCIATE MEMBER GEESMAN: I want to
11 thank everybody for participating today. I look
12 forward to seeing you again in a few weeks.

13 HEARING OFFICER WILLIAMS: Thank you,
14 all.

15 (Whereupon, at 3:22 p.m., the hearing
16 was adjourned.)

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CERTIFICATE OF REPORTER

I, JAMES A. RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 14th day of February, 2003.

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